

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

DARRYL WILLIAM YOUNG,)	
)	
Petitioner,)	CASE NO. C05-924RSM
)	(CR99-210RSM)
v.)	
)	
UNITED STATES OF AMERICA,)	ORDER GRANTING MOTION TO
)	AMEND AND TRANSFERRING
Respondent.)	§ 2255 MOTION TO NINTH CIRCUIT
)	

Petitioner is a federal prisoner who is currently incarcerated at the Federal Correctional Institution at Sheridan, Oregon. On May 11, 2005, petitioner submitted to the Court for filing a document entitled "Petition for Writ of Habeas Corpus Under the 'All Writs Act'" in which he challenges the application of a "reckless endangerment" enhancement to the sentence imposed following his conviction on federal bank robbery charges. Petitioner contends that he is currently serving this unconstitutional 18 month enhancement and that he is therefore entitled to release from custody.

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1 On June 27, 2005, after carefully reviewing petitioner's petition, this Court issued an Order
2 directing petitioner to clarify whether his intention was to proceed with this action under 28 U.S.C. §
3 2241 or under 28 U.S.C. § 2255. On July 22, 2005, petitioner filed a motion to amend his petition in
4 which he requests that his petition be construed as a successive motion under § 2255. Petitioner
5 acknowledges in his motion that this Court is likely to transfer his successive motion to the Ninth
6 Circuit Court of Appeals and he has provided this Court with an application for leave to file a second
7 or successive motion pursuant to § 2255, and a memorandum in support of that application, which he
8 apparently expects will be forwarded to the Ninth Circuit by this Court.
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10 As petitioner seeks to challenge the sentence imposed in his federal criminal proceedings, his
11 petition is properly construed as a motion under § 2255. Accordingly, petitioner's motion to amend
12 his petition to convert it to a § 2255 motion (Dkt. No. 9) is GRANTED.

13 As petitioner has previously filed at least one other § 2255 motion which was denied on the
14 merits, the instant motion is, in fact, a second or successive one. This Court is without jurisdiction to
15 consider such a motion until the Ninth Circuit Court of Appeals has authorized its filing. *See* 28
16 U.S.C. §§ 2255 and 2244(b)(3)(A). Accordingly, this case is hereby TRANSFERRED to the Ninth
17 Circuit Court of Appeals, in the interests of justice, pursuant to 28 U.S.C. § 1631. Should petitioner
18 be granted leave by the Ninth Circuit Court of Appeals to proceed on his successive motion, his filing
19 date for the purposes of the one-year statute of limitations set forth in § 2255 shall be the date of the
20 initial filing in this Court.

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22 The Clerk is directed to close this case and to transfer all original documents to the Ninth
23 Circuit Court of Appeals. The Clerk shall, however, retain a copy of the motion and of this Order in
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1 the file. The Clerk is further directed to send a copy of this Order to petitioner, to the United States
2 Attorney, and to the Honorable Ricardo S. Martinez.

3 DATED this 18th day of August, 2005.

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7 RICARDO S. MARTINEZ
8 UNITED STATES DISTRICT JUDGE

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10 Recommended for Entry this
11 17th day of August, 2005.

12 /s/ JAMES P. DONOHUE
13 United States Magistrate Judge

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